1. DEFINITIONS USED HEREIN – “Contract” means the terms and conditions contained herein and Seller’s order acknowledgement. Such contract will remain in full force and effect as written. “Seller”, “us” or “we” means FCX Performance, Inc., its subsidiary that is the Seller of Goods to Buyer, or its authorized representative of each of Seller and you. Buyer means the goods, equipment, materials, parts, supplies and/or services supplied by us to you as described in this contract.

2. COMPLETE CONTRACT – This contract contains the complete and exclusive agreement between you and us regarding the terms of the sale of the Goods by us to you. This contract supersedes and replaces all previous requests, quotations, orders or agreements concerning the Goods. Any additional or different terms will not become part of the contract for the sale of the Goods and are hereby expressly rejected by us without further notice unless made in writing and signed by an authorized representative of each of Seller and you. Buyer’s acceptance of shipment or performance and/or payment for the Goods constitutes acceptance of the contract. All orders are subject to acceptance by Seller.

3. PRICES – All prices quoted are estimates only and are subject to change without notice. Bringing charges in effect at the time of application or desirable charges in effect at the time of shipment, will not be added and paid to invoice, unless otherwise specified by us. Buyer is responsible for freight-in on “freight collect” shipments. Total price for services will be calculated based on our standard service rates in effect at the time the services are performed, and parts supplied as part of services will be invoiced at prevailing prices. Prices do not include duties, any present or future sales, use, excise, value-added or similar taxes. Any applicable taxes or governmental impositions, which may be required to be paid or collect, will be added to the price and paid by you unless we receive a valid exemption certificate. Where applicable, such taxes shall be billed as a separate item and paid by Buyer. All prices and/or discounts are based on receiving an order for the quantities specified. Any change in quantities of orders shall change in price and/or discount.

4. TITLE, DELIVERY AND RISK OF LOSS – Unless otherwise specified, delivery points shall be F.O.B. point specified by Seller, but title to the Goods and liability for loss or damage in transit or thereafter shall pass to you upon delivery of the Goods to a common carrier for shipment. Shipping and service completion dates are estimates only and not guaranteed.

5. SHORT, DAMAGED OR DEFECTIVE SERVICES – Claims for Goods delivered short, damaged or defective (not due to fault of carrier) shall be filed with Seller within thirty days of date of invoice. Buyer’s terms for shortages shall detail shipment weights and method of counting the Goods. Claims for Goods delivered short, damaged or defective as a result of the fault of the carrier will be handled by Seller directly with the carrier.

6. PAYMENT – Unless otherwise agreed by Seller in writing, full payment is due within thirty days after invoice date. Orders are subject to final approval by Seller’s credit department, which may require full or partial advancement. If Buyer delays order processing, partial payment based on the portion of the order completed shall then be paid. Pro rata payments shall be due as shipments are made or as services are performed. In the event Buyer delays shipment, full payment shall be due thirty days from the date seller could have otherwise shipped the Goods. Storage shall be at Buyer’s risk and charges thereof shall be paid before shipment. If Buyer does not pay on time, Seller may, in its sole discretion, require Buyer to deposit 100% of the estimated cost of the work for which we reserve the right to suspend its long-term contracts with the customer, and may, in its sole discretion, require, and Buyer hereby grants to Seller, a continuing purchase money security interest in all inventory, equipment, and Goods sold by Seller to or for the benefit of Buyer, wherever located, and all accessions and products and all proceeds from the sale thereof; and all accounts and accounts receivable which may from time to time hereafter come into existence during the term of this Security Agreement. Seller’s purchase money security interest is explicitly limited to outstanding obligations between Seller and Buyer.

10. LIMITED WARRANTY AND WARRANTY DISCLAIMER – The Goods sold hereunder and/or used in connection with the services are not manufactured by us, and as such, we make no warranty, express or implied, concerning such Goods other than that we have good title to such Goods and will use our reasonable commercial efforts to obtain from each manufacturer, in accordance with the manufacturer’s warranty, the repair or replacement of Goods that may prove to be defective in material or workmanship. Services provided by third party contractors are subject only to such warranties as are extended by such third party contractors. Notwithstanding the foregoing, to the extent we are permitted and able and so long as Buyer has paid in full for the Goods or services subject to the warranty claim, we will pass on and make available to you any warranties made by the suppliers, manufacturers of such Goods or third party contractors. Services provided directly by Seller, we warrant that our services will be performed in accordance with applicable industry standards prevailing at the time of performance. Our obligations under warranty are conditioned upon your compliance with the terms of the warranty. Buyer’s acceptance of the warranty, after shipment, constitutes acceptance of the warranty, which will not be subject to any term of warranty, after shipment, of the warranty. Seller reserves the right to suspend its long-term contracts with the customer, and may, in its sole discretion, require, and Buyer hereby grants to Seller, a continuing purchase money security interest in all inventory, equipment, and Goods sold by Seller to or for the benefit of Buyer, wherever located, and all accessions and products and all proceeds from the sale thereof; and all accounts and accounts receivable which may from time to time hereafter come into existence during the term of this Security Agreement. Seller’s purchase money security interest is explicitly limited to outstanding obligations between Seller and Buyer.

11. LIMITATIONS OF REMEDIES AND DAMAGES – You agree that our obligation described in the preceding paragraph is your sole and exclusive remedy, and that our total liability to you, your customers or to any other person, relating to this contract, its performance or non-performance or from the sale of Goods furnished or services provided, is limited to the price of the Goods and/or services giving rise to the claim. Except as to title, such obligation and liability shall be limited to the amount of the manufacturer’s warranty period for the applicable Goods. SELLER AND ITS SUPPLIERS WILL NOT, IN ANY EVENT, BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PENAL DAMAGES INCURRED FROM OR RELATING TO ANY SERVICE OF THE SERVICES HEREUNDER. ANY CLAIM FOR RECOVERY IS BASED UPON OR ARISES OUT OF THEORIES OF CONTRACT, NEGLIGENCE, TORT (INCLUDING STRICT LIABILITY) OR OTHERWISE, INCLUDING BUT NOT LIMITED TO BACK CHARGES, LABOR COSTS, COSTS OF REMOVAL, REPLACEMENT, TESTING OR INSTALLATION, LOSS OF EFFICIENCY, LOSS OF PROFITS OR REVENUES, LOSS OF USE OF THE GOODS OR ANY ASSOCIATED PRODUCTS, DAMAGES TO ASSOCIATED PRODUCTS, LATENESS OR DELAYS IN DELIVERY, UNAVAILABILITY OF GOODS, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, FACILITIES OR SERVICE, DOWNTIME, OR CLAIMS FROM YOUR CUSTOMERS OR OTHER PARTIES TO YOU OR DIRECTLY TO US FOR SUCH DAMAGES.

12. CONFIDENTIALITY - You agree that any commercial, strategic or technical data or other information of Seller, including pricing, samples or other materials ("Confidential Information") that is disclosed to is disclosed to or comes into your or you or your customer’s possession, either orally or in writing or other form, and in whatever medium, is to be treated as confidential and proprietary. You agree that Confidential Information will be maintained in strict confidence, not disclosed to third parties and not used for any purpose other than to use the Goods provided under the contract. You covenant and agree that, during the transaction or the performance of services under the transaction, and for a period of twenty (2) years, you will not directly or indirectly solicit for employment or employ (including as a consultant, independent contractor or similar arrangement), or aid others to do so, any employee of Seller or any subsidiary or affiliate of Seller.

13. HAZARDOUS BUSINESS – You assume all risk and liability resulting from Goods delivered hereunder, whether used singly or in combination with other products. Unless otherwise agreed by Seller, Goods furnished hereunder, are not to be used in connection with “safety-related” applications within any nuclear facility or any other hazardous activity such as aircraft, space exploration or other critical applications where failure of a single component could cause substantial harm to persons or property. We disclaim any and all liability if such commercial products are used in any such applications.
14. COMPLIANCE WITH STANDARDS - Seller shall take reasonable steps to ensure
Goods sold by it are in compliance with various nationally recognized standards and
such regulations as may affect the Goods; however, Buyer recognizes the Goods
are utilized in many regulated applications and that from time to time standards and
regulations are in conflict with one another. Seller makes no promise or
representation that the Goods will conform to any federal, state or local laws,
ordinances, regulations, codes or standards, except as particularly specified and
agreed upon, in writing as part of the contract between Buyer and Seller. Seller
prices do not include the cost of any related inspections, permits or inspection fees.
All repairs and/or calibration performed by us will be completed in accordance with
all applicable OEM standards unless requested in writing from the Buyer and agreed to in
writing by us.
15. SITE CONDITION AND SERVICE HOURS - Our service technicians reserve the
right to refuse work under hazardous conditions. In case of doubt, a mutual
agreement must be reached prior to the start of work. Our technicians are
responsible for standard Personal Protective Equipment (PPE) and any site-specific
PPE shall be provided by Buyer at Buyer's sole cost. If the services are to be
performed on your premises you will afford us the necessary utilities and secured
space for the introduction, storage and use of our Goods and equipment during the
performance on the services. Seller's normal working hours shall be defined as an eight
(8) hour day between the hours of 8:00 am and 5:00 pm, excluding weekends and
holidays observed by us. Service or travel outside these hours will be invoiced at our
prevailing Overtime or Holiday rates accordingly.
16. U.S. FOREIGN CORRUPT PRACTICES ACT - Buyer states that it is an
independent contractor, and represents, warrants, and covenants that it has not paid,
offered, or otherwise authorized the giving of, or anything of value to any foreign official
(advised in the U.S. Foreign Corrupt Practices Act, as amended), in connection with the
purchase and resale of Goods ordered from Seller.
17. GOVERNMENT CONTRACTS – If you purchase Goods for sale to any U.S.
government, state or local government agency, you are responsible to notify us of all
government procurement conditions applicable to the sale when you request our
quote. We will review the conditions and advise you of our ability to comply. If
any government action should place or contain a limitation on the price provided for in
this contract such that the contract is against applicable government policy for us to
charge, assess or receive the full amount or to increase such prices as determined by
this contract, then we shall have the option to (1) continue to perform under this
contract subject to such adjustments in prices that we may deem necessary to comply with such
government action, (2) revise this contract, subject to your approval, in order to most
nearly accomplish the original intent of this contract, or (3) terminate performance of the affected
portions of this contract without liability for any damages.
18. EXPORTS – Buyer represents and warrants that it is not on, or associated with any
organization on the United States Department of Commerce's Bureau of Industry and
Security's Denied Persons List or Unverified List; or the United States
Department of the Treasury's Office of Foreign Assets Control lists, Specially
Designated Nationals, Specially Designated Global Terrorists, Specially Designated
Narcotics Traffickers, Specially Designated Narcotics Traffickers-Kingpin, or Specially
Designated Terrorists List; or the United States Department of State's Designated
Foreign Terrorist Organizations, Embargoed Countries list, or Debarred Persons
List; or is subject to denial by the United States Department of State or United States
Department of Commerce. You shall comply with all relevant laws and regulations of governmental
bodies or agencies, including but not limited to all applicable export control laws of the
United States and other governing agencies and their successors. BUYER AGREES TO INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY AND ALL COSTS, LIABILITIES, PENALTIES, SANCTIONS AND FINES RELATED TO NON-COMPLIANCE WITH APPLICABLE EXPORT LAWS AND REGULATIONS.
19. CANCELLATION – Special orders may not be canceled. Other orders may be
canceled upon written notice by Buyer within 7 days of the order, subject to a
backcharge as determined by us that is based upon a percentage of the total
amount due under this order. Cancellation for services requires at least 72 hours' notice.
All cancellations for services made less than 72 hours prior to the scheduled
services time will be subject to a 50% estimated job cost charge. Any material
purchased for a service job prior to cancellation will be billed at Seller's normal rate.
If refundable, products will be returned to the vendor and Buyer will be responsible for
any restocking fees.
20. ASSIGNMENT – You may not assign or transfer this contract by operation of law or
otherwise without our prior written consent, which will not be unreasonably withheld.


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- You must obtain a written return authorization (RA) from us before returning any items and pay any resulting restocking charges as determined by us. We reserve the right to refuse delivery on all items returned to us without a valid RA. Any RA will be valid for 30 days from the date of issuance. Returned material must be received within that 30-day period, or the RA is void. You must prepay all freight. We will issue credit for freight where incorrect shipments have been made by us. All returned items must be new and unused. Special orders cannot be canceled or returned. All returned items must either be stock or non-stock items that we can return to the manufacturer.

22. APPLICABLE LAW – This contract and any subsequent contract referred to herein
shall be governed by and construed in accordance with the laws of the State of Ohio. Any dispute or claim arising out of or in connection with this contract shall be
brought exclusively in any state or federal court with jurisdiction and venue
over Cuyahoga County, Ohio and the dispute or claim being brought, unless all
such courts refuse to accept jurisdiction and/or venue. Trial by jury is hereby
waived by both parties. The United Nations Convention on Contracts for the
International Sale of Goods is hereby disclaimed and shall not apply to the purchase and
sale of Goods pursuant to this contract.

23. SEVERABILITY – Invalidity of any of the terms provided herein shall not affect the
validity of any other term.

24. WAIVER – Waiver by us of your performance, or inaction with respect to your
breach of any provision of this contract, or failure of us to enforce any provision of
this contract, will not be deemed a waiver of future compliance herewith or a course
of performance modifying such provision, and such provision will remain in full
force and effect as written.

ADDITIONAL TERMS AND CONDITIONS RELATED TO EXPORT OF GOODS
IN ADDITION TO THE STANDARD TERMS AND CONDITIONS ABOVE, EXPORT
SALES OF GOODS WILL BE GOVERNED BY THE FOLLOWING ADDITIONAL
TERMS AND CONDITIONS (“ADDITIONAL TERMS”). IN THE EVENT OF A
CONFLICT BETWEEN STANDARD TERMS AND CONDITIONS AND THE
ADDITIONAL TERMS, THE ADDITIONAL TERMS SHALL PREVAIL FOR
EXPORT SALES OF SELLER PRODUCTS.

25. FOREIGN PRINCIPAL PARTY IN INTEREST - FREIGHT FORWARDER
AND DOCUMENTATION – It is specifically agreed that Buyer shall be the foreign principal
party in interest and/or that its freight forwarder shall act as Buyer’s agent in such
capacity under Export Administration Act or other applicable purposes; and Buyer and
freight forwarder shall assume responsibility for all export or routed transactions
documentation. At Seller’s request, Buyer or its freight forwarder shall provide
copies of any export, shipping, or import documentation prepared by Buyer or its
freight forwarder related to sales to them by Seller.

26. COUNTRY OF IMPORTATION AND ANTI-DIVERSION - Buyer represents that it is
purchasing products from the U.S. and importing them to the country specified in the
Buyer and Seller documentation. Buyer agrees that the products will be shipped to the
specified destination in compliance with the laws of such destination and the
U.S., and that the products will not be directly or indirectly sold, exported,
transferred, assigned, used, or otherwise disposed of in a manner which may result in
any non-compliance with applicable U.S. laws and regulations relating to the
product purchased by Buyer. Any commodities, technology and software will be
exported from the U.S. in accordance with the U.S. Export Administration
Regulations and other applicable laws or regulations. Diversion contrary to U.S. law
is prohibited. If requested by Seller, Buyer shall provide documentation satisfactory
to Seller verifying delivery at the designated country. Buyer further agrees to inform
Seller at the time of order of any North American Free Trade Agreement or other
applicable documentation, packaging or product marking or labeling, but Seller shall
not be responsible for providing any such documentation, packaging, marking or
labeling other than such documents that are necessary under U.S. export laws and
regulations for export, unless Seller expressly agrees, in writing, to do so.

27. PERMITS, EXPORT, AND IMPORT LICENSES: Buyer shall be responsible for
obtaining any licenses or other official authorizations that may be required by the
country of importation and/or under the Export Administration Regulations,
International Traffic in Arms Regulations, Toxic Substances Control Act, or other
applicable laws or regulations.